

**Remarks/Arguments**

In addition to the Amendment and remarks/arguments submitted August 26, 2004, Applicant requests that Examiner consider the following remarks/arguments, and the concurrently submitted declarations of Michael G. Mikurak and Steven Lieske. Claims 20-117 are currently pending in the application. All pending claims are fully supported by the specification, and no new matter has been added to the application. For at least the reasons presented below, Applicant asserts that the pending claims are in condition for allowance.

**1. The Prior Art Cited by the Examiner Is not Relevant to the Obviousness Inquiry.**

Claims 20-117 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Dworkin, U.S. Patent No. 4,992,940 (hereinafter "Dworkin"), in view of Dugan et al., U.S. Patent No. 6,363,411 B1 (hereinafter "Dugan"). In Applicant's prior response to the Office Action, Applicant respectfully opposed this rejection on the basis that *Dworkin* and *Dugan* separately or in combination fail to teach or disclose Applicant's claimed invention. Applicant now further asserts that *Dugan* is inapplicable to the present inquiry because Applicant's invention predates the filing of the *Dugan* application, and, therefore, *Dugan* cannot be used as a prior art reference. On this additional basis Applicant respectfully submits that the application is in order for allowance.

Applicant respectfully requests that the Examiner consider the attached declaration of inventor Michael G. Mikurak. Applicant asserts that the declaration should permit Applicant to swear behind the *Dugan* reference, eliminating the prior art on which the Examiner relies in allegedly demonstrating that Applicant's invention is obvious under 35 U.S.C. § 103(a). An "[a]pplicant may overcome a 35 U.S.C. [§] 103 rejection based on a combination of references by showing completion of the invention by [the] applicant prior to the effective date of any of the references." MPEP § 715.02 ¶ 4. Antedating a reference is accomplished by producing a declaration of the inventor attesting that the date of invention of the claimed invention is prior to the effective date of the reference claimed as prior art by the Examiner. See 37 C.F.R. § 1.131 (2003).

In the prosecution of the presently claimed invention, the Examiner produced as prior art *Dugan*, the effective date of which is October 19, 1999. This filing date is approximately one month prior to the filing date of the present applicant (November 22,

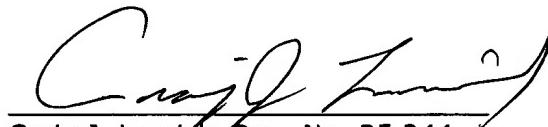
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1999). Michael G. Mikurak, inventor of the claimed invention, conceived of the claimed invention prior to October 19, 1999. Decl. of Michael G. Mikurak, October 7, 2004. Because the inventor conceived of the claimed invention prior to the effective date of *Dugan, Dugan* is inapplicable and may not be used in combination with *Dworkin*, U.S. Patent No. 4,992,940, to argue that Applicant's claimed invention is obvious in light of the prior art. On this additional basis, Applicant asserts that rejection under 35 U.S.C. § 103 is inappropriate and should be withdrawn, and that the claims are in condition for allowance.

## 2. Conclusion

All rejections having been addressed, Applicant submits that all pending claims are in condition for allowance. Applicant respectfully requests reconsideration of the rejected claims and that a Notice of Allowance be issued in this case. In the event a telephone conversation would expedite the prosecution of this application, the Examiner may reach the undersigned at 612-607-7000. If any fees are due in connection with the filing of this paper, then the Commissioner is authorized to charge such fees including fees for any extension of time, to Deposit Account No. 50-1901 (Docket 060021-335501).

Respectfully submitted,



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